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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,474	01/31/2004	Michael Eugene Frasier	6301P0130US	5366

41528 7590 06/30/2006

THE LAW OFFICE OF RANDALL T. ERICKSON, P.C.  
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EXAMINER
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NOVOSAD, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/769,474	Applicant(s) FRASIER, MICHAEL EUGENE	
	Examiner Christopher J. Novosad	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4, 7-9, 11 and 12 is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 10, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 13-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

The Requirement for Restriction dated March 16, 2006 has been withdrawn in view of Applicant's arguments in the response dated April 17, 2006.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 6, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimke.

With respect to claims 1 and 6, the Shimke '047 patent discloses a seed tube guard (4) for a seed tube (16). The seed tube guard is mounted to a frame (3), which is in turn mounted to a seed planting machine. The guard comprises a body (2, 4) for fronting the seed tube. The guard comprises a first connection configuration (see Fig. 2 - bolts holes - bolts not in place) fixed to the body for mounting the guard to the frame member and a second connection configuration (see, e.g., Figs. 1 and 3 - bolts 9 in place). The connection configurations are mutually engaged by hand (i.e., the bolts are inserted, and the nuts can be threaded by hand).

With respect to claim 19, the first and second connection configurations are engageable first by a relative sliding motion therebetween and second by a pivoting motion therebetween.

As to claim 20, the pivoting motion is prevented from reversing by laterally arranged structure of the seed planting machine.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimke '047 alone.

The Shimke '047 patent discloses the claimed invention, as stated above, including that the guard is comprised of steel. See Col. 3, line 4. What the Shimke '047 patent does not disclose is that the frame member is composed of iron. However, it would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to construct the frame member of iron, since the examiner takes OFFICAL NOTICE that iron and its alloys are the typical material of construction for those parts.

***Allowable Subject Matter***

Claims 13-18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2-4, 7-9, 11 and 12 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached at 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher J. Novosad  
Primary Examiner  
Art Unit 3641

June 26, 2006